



INTERIOR BOARD OF INDIAN APPEALS

Estate of Cleatis Pocowatchit

38 IBIA 214 (11/15/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF CLEATIS POCOWATCHIT : Order Affirming Decision
:
: Docket No. IBIA 02-159
:
: November 15, 2002

Appellant Mary A. Waysepappy sought review of a July 17, 2002, order denying rehearing issued in the estate of Decedent Cleatis Pocowatchit by Administrative Law Judge Richard L. Reeh. IP OK 114 P 00. For the reason discussed below, the Board of Indian Appeals (Board) affirms that decision.

In her notice of appeal, as she had before Judge Reeh, Appellant alleged that Decedent was a chronic alcoholic. She argued that Decedent was not of sound mind because of his alcoholism and therefore could not execute a will.

At page 1 of his May 2, 2001, order approving Decedent's will, Judge Reeh stated:

[A] Will dated December 11, 1972 was submitted. The instrument was duly executed in accordance with all requirements of making a Will to dispose of Indian trust property pursuant to 43 C.F.R. § 4.260. It was self-proving. Although there was an objection to the will, based upon the evidence adduced, it should be admitted to probate as the decedent's Last Will and Testament, and it should be approved.

This statement does not fulfill the Judge's responsibility to make findings of fact and conclusions of law in regard to the question of whether Decedent's will should have been approved. Although the Judge stated his legal conclusion that the will should be approved, he provided no factual basis for that conclusion. Because of this, Appellant had no way to know how she should proceed in challenging the Judge's decision. In similar cases, the Board has vacated and remanded probate decisions so that the judge can provide appropriate findings of fact. See, e.g., Estate of Ikey Reece Wauqua, 36 IBIA 109 (2001). Had Judge Reeh's discussion of the will in this estate remained at this level, the Board would have done so again.

However, Judge Reeh provided some discussion of the issue of Decedent's alleged alcoholism in the July 17, 2002, order denying rehearing. He stated:

Evidence received at the hearing * * * showed that the decedent's will was properly executed after consultation with a government attorney and before disinterested will witnesses who were employees of the Solicitor's Office [1/]. To invalidate a properly executed will for lack of testamentary capacity, contestants must show that the decedent did not know the natural objects of his bounty, the extent of his property or the desired distribution of that property. Further, the evidence must show that this condition existed at time of execution. Estate of Leona Ely, 20 IBIA 205 (1991), Estate of Johanna Small Rib, 19 IBIA 236 (1991), Estate of John S. Ramsey, 2 IBIA 237 (1974). It did not, and the will was properly executed.

July 17, 2002, Order at 1-2.

The Board does not condone using a petition for rehearing as the vehicle for making the findings of fact that should have been included in the original decision. However, in denying rehearing, the Judge correctly stated the law in regard to invalidating a will for lack of testamentary capacity.

As noted above, Appellant argued in her notice of appeal that Decedent was a chronic alcoholic, but did not challenge the actual execution of the will. Therefore, on September 19, 2002, the Board gave Appellant an opportunity to indicate what evidence she had that might refute the Judge's findings as to Decedent's testamentary capacity. It informed Appellant that failure to respond to its order or to make the showing described would result in the affirmance of the Judge's order denying rehearing. Appellant's response was due October 25, 2002.

Appellant has not responded.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Reeh's July 17, 2002, order denying rehearing in this estate is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

1/ The Board does not have the complete record before it. For purposes of this decision, it assumes that Judge Reeh is referring to the Solicitor's Office in the Department of the Interior.